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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5562

DATE COMPLAINT FILED: October 12, 2004

DATE OF NOTIFICATION: October 19, 2004

DATE ACTIVATED: February 9, 2005

EXPIRATION OF STATUTE OF LIMITATIONS:
October 2009

COMPLAINANT:

Democratic National Committee

RESPONDENT:

Sinclair Broadcast Group, Inc.

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 431(9)(B)(i)

2 U.S.C. § 434(f)(3)(B)(i)

2 U.S.C. § 441b(a)

11 C.F.R. § 100.29

11 C.F.R. § 100.73

11 C.F.R. § 100.132

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

MUR: 5570

DATE COMPLAINT FILED: October 18, 2004

DATE OF NOTIFICATION: October 25, 2004

DATE ACTIVATED: February 9, 2005

EXPIRATION OF STATUTE OF LIMITATIONS:
2009 (various dates)

COMPLAINANT: Sam Osborne

RESPONDENTS: Sinclair Broadcast Group, Inc.
Mark Hyman
Frederick G. Smith

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 431(9)(B)(i)
2 U.S.C. § 434(f)(3)(B)(i)
2 U.S.C. § 441b(a)
11 C.F.R. § 100.29(c)(2)
11 C.F.R. § 100.73
11 C.F.R. § 100.132

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaints in MURs 5562 and 5570 allege, respectively, that Sinclair Broadcast Group, Inc. ("Sinclair")² was about to make and made impermissible corporate contributions in connection with certain communications damaging to presidential candidate John Kerry. MUR 5562 alleges that Sinclair was planning to order all of its television stations to air, commercial-free, a film entitled *Stolen Honor: Wounds that Never Heal* ("*Stolen Honor*"), and MUR 5570 alleges that a local Sinclair-owned station aired "anti-Kerry" comments prior to the general election.

Sinclair, which owns sixty-two television stations, is a publicly traded company. [http://www.sourcewatch.org/index.php?title=Sinclair Broadcast Group](http://www.sourcewatch.org/index.php?title=Sinclair_Broadcast_Group); <http://www.sbg.net>; MUR 5562 Response at 1-2; MUR 5570 Response at 2. Approximately ninety-five percent of

² Sinclair apparently transferred ownership of most of its television stations to Sinclair Television Group, Inc., a wholly owned subsidiary of Sinclair, on September 30, 2003. Sinclair 2003 Annual Report, at 6. "Sinclair" will refer to both Sinclair Broadcast Group, Inc., and its subsidiaries, including Sinclair Television Group, Inc.

Sinclair's stock is reportedly controlled by four brothers, who also serve as directors and three as corporate officers. [http://www.sourcewatch.org/index.php?title=Sinclair Broadcast Group](http://www.sourcewatch.org/index.php?title=Sinclair_Broadcast_Group); <http://www.sbgnet.net>. Sinclair thus does not appear to be owned or controlled by any political party, political party or candidate, and there have been no allegations to this effect. *Id.*; MUR 5562 Response at 1-2; MUR 5570 Response at 2.

As discussed in more detail below, the complaint in MUR 5562 is prospective – in fact, the broadcast that was actually shown was substantially different than the one challenged – and the communications that are the focus of the MUR 5570 complaint fall under the media exemption. Therefore, this Office recommends that the Commission find no reason to believe that the respondents in either MUR 5562 or MUR 5570 violated 2 U.S.C. § 441b(a) and close the files.

II. DISCUSSION

A. MUR 5562

On October 9, 2004, the *Los Angeles Times* ran a front-page story reporting that, according to network and station executives familiar with the plan, Sinclair was ordering its sixty-two stations – many of them in so-called swing states – to preempt their regular prime-time programming between October 21 and October 24, 2004, to air *Stolen Honor* commercial-free. Elizabeth Jensen, *Conservative Group to Air Anti-Kerry Film*, *Los Angeles Times*, Oct. 9, 2004, at A1. According to the news story, the film, allegedly funded by Pennsylvania veterans and produced by a veteran and former newspaper reporter, "attacks Sen. John F. Kerry's activism against the Vietnam war." *Id.* Three days later, or approximately a week before *Stolen Honor* reportedly would begin airing, relying in part on the *Los Angeles Times* story, the DNC filed a complaint ("DNC Complaint") with the Commission, alleging that Sinclair was "about to make

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1 an unlawful corporate-funded electioneering communication and corporate in-kind contribution
2 to the Bush-Cheney '04 campaign and the Republican National Committee." DNC Complaint at
3 1.

4 In response, Sinclair maintained that the matter complained of by the DNC is moot
5 because Sinclair's television stations did not broadcast *Stolen Honor*. MUR 5562 Response at 1-
6 2. Rather, according to the response, a number of Sinclair's stations "aired an internally
7 produced news program, entitled *A POW Story: Politics, Pressure and the Media*" ("*POW*
8 *Story*"). *Id.* The response describes *POW Story* as a program "which discussed and included
9 segments of [*Stolen Honor*], but which also discussed and presented similarly lengthened
10 segments from a documentary which was very favorable to Senator Kerry." *Id.* Further, the
11 response states that *POW Story* "also focused on the controversy surrounding [*Stolen Honor*],
12 and included interviews of individuals with very disparate opinions about the subject matter of
13 the news special." *Id.* at 2. Press reports corroborate that no Sinclair television station broadcast
14 the film *Stolen Honor* and that some aired *POW Story* in the format described in the response.
15 Frank Ahrens and Howard Kurtz, *Anti-Kerry Film Won't Be Aired*, The Washington Post, Oct.
16 20, 2004, at A7; CBSNEWS.com, *Sinclair Amends Kerry Film Plans*, Oct. 20, 2004, available at
17 <http://www.cbsnews.com/stories/2004/10/19/politics/printable650030.shtml>.

18 There remains no allegation of prospective or actual wrongdoing before the Commission.
19 Under these circumstances, the Commission should not speculate whether there might have been
20 a violation under a set of circumstances that did not occur. *Cf.* Concurring Statement of Reasons
21 for MUR 5467 (Michael Moore), Smith and Toner, Aug. 2, 2004, at 2-3 (stressing the
22 importance of "Commission policy not to entertain speculative complaints" in order to "preserve
23 the integrity of the enforcement process and to focus its limited resources on actual violations of

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1 the law.”). Accordingly, this Office recommends that the Commission find no reason to believe
2 that Sinclair Broadcast Group, Inc. violated 2 U.S.C. § 441b(a) and close the file in MUR 5562.

3 **B. MUR 5570**

4 The complaint in MUR 5570 (“Osborne Complaint”) states that it is “directed toward the
5 doings” of Sinclair and corporate officers Fred Smith and Mark Hyman, as well as other
6 unnamed corporate officials who allegedly “have participated in or authorized the illegal use of
7 corporate funds to affect the 2004 election for the presidency.” Osborne Complaint at 1. The
8 complaint focuses on several quoted comments concerning Senator Kerry’s presidential
9 candidacy that it claims were broadcast on KGAN, a Sinclair-owned station, in Cedar Rapids,
10 Iowa, “[v]ia [Sinclair’s] corporate resources and using Mark Hyman’s office.” *Id.* According to
11 the complaint, “In conveying its political-attack message, Sinclair uses its Vice President for
12 Corporate Relations, Mark Hyman (‘Hyman’).” *Id.* The complaint does not list the dates or
13 times of Hyman’s alleged comments, or the programs or the contexts in which they allegedly
14 were made.

15 The response, noting the lack of specificity in the complaint, states that Sinclair believes
16 the comments quoted in the complaint all appeared during KGAN’s news programming. MUR
17 5570 Response at 1-2. According to the response, thirty-nine of Sinclair’s sixty-two television
18 stations, including KGAN, regularly broadcast the news, and all statements made by Hyman in
19 KGAN’s news programming are clearly labeled as commentary during the broadcast. *Id.*

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1 While corporations are generally prohibited from making contributions or expenditures
2 under 2 U.S.C. § 441b(a), exemptions allow for the broadcast of any "news story, commentary or
3 editorial" unless the facility(ies) distributing the broadcast are owned or controlled by any
4 political party, political committee or candidate. 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R.
5 § 100.132 (regarding expenditures); 11 C.F.R. § 100.73 (regarding contributions)(collectively
6 "media exemption"). The media exemption also excludes from the definition of electioneering
7 communication "a communication appearing in a news story, commentary or editorial distributed
8 through the facilities of any broadcasting station, unless such facilities are owned or controlled by
9 any political party, political committee, or candidate." 2 U.S.C. § 434(f)(3)(B)(i); *see also*
10 11 C.F.R. § 100.29(c)(2). Hence, a news story, commentary or editorial distributed by a
11 broadcast station not owned or controlled by a political party, political committee or candidate
12 will not be considered an expenditure, a contribution, or an electioneering communication.

13 According to a press report, Hyman hosts a segment on Sinclair stations. David Zurawik,
14 *Sinclair editorials labeled as such*, The Baltimore Sun, Dec. 15, 2004, at 1, available at
15 www.baltimoresun.com/features/lifestyle/bal-to.sinclair15dec15_0,2751716.story. That segment,
16 called "The Point Commentary," is reportedly a "one-minute daily commentary that is intended
17 to stimulate public discourse," and is broadcast on approximately forty of Sinclair's sixty-two
18 stations, including KGAN. www.kgan.com; www.newscentral.tv/station/bios/mhyman.shtml.
19 The KGAN website labels the segment an "editorial." www.kgan.com. The available
20 information suggests that Hyman most likely made the statements during broadcasts of "The
21 Point Commentary." If so, the statements fall squarely within the media exemption because they
22 appear to be "commentary or editorial distributed through the facilities of" Sinclair's

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broadcasting stations. Accordingly, this Office recommends that the Commission find no reason to believe that Sinclair Broadcast Group, Inc., Mark Hyman or Frederick G. Smith violated 2 U.S.C. § 441b(a) and close the file in MUR 5570.

III. RECOMMENDATIONS

1. Find no reason to believe that Sinclair Broadcast Group, Inc. violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that Mark Hyman violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Frederick G. Smith violated 2 U.S.C. § 441b(a).
4. Close the files in MURs 5562 and 5570.
5. Approve the appropriate letters.

5/16/05
Date

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